

## Rural Utilities Service, USDA

## § 1735.22

not to exceed 40 percent, at the end of any calendar quarter in the period beginning 2 years prior to the receipt by RUS of the borrower's loan application form (RUS Form 490). This restoration to the higher level of net worth shall take place before RUS will determine the feasibility of the proposed loan.

### § 1735.19 Mergers and consolidations.

RUS does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, RUS will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas. See RUS Bulletins 320-4, 321-2, 325-1, and 326-1.

### § 1735.20 Acquisitions.

(a) RUS finances the acquisition by a borrower of another system, lines, or facilities only when the acquisition is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1735.13.

(b) RUS determines the amount it will lend for each acquisition. If the acquisition price exceeds this amount, the borrower shall provide the remainder.

(c) For additional policies on acquisitions, see subpart F through J of this part.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66253, Dec. 20, 1993]

### § 1735.21 Refinancing loans.

(a) Hardship loans and guaranteed loans may include funds to refinance outstanding indebtedness of corporations furnishing telephone service when such refinancing is necessary and incidental to furnishing or improving telephone service in rural areas. Refinancing may not constitute more than 40 percent of the loan.

(b) Loans for refinancing are not made solely to enable borrowers to obtain a lower interest rate or a longer amortization period. RUS requires borrowers, to the greatest extent possible, to liquidate outstanding indebtedness through the use of nonloan funds.

(c) If deemed necessary by RUS to provide itself with adequate security, RUS will consider loans for refinancing

outstanding indebtedness secured by a lien on property offered as security for the loan, if the property covered by the lien is integral to the operation of the system.

(d) RUS will consider loans for refinancing when the borrower would otherwise be unable to meet payments on both the outstanding indebtedness and the loan as they become due.

(e) RUS may consider loans for refinancing in other situations.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66254, Dec. 20, 1993]

### § 1735.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the time agreed. See 7 CFR 1735.18 and 7 CFR 1735.51.

(b) RUS generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR 1735.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien on all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that continuous and efficient telephone service will be rendered.

(d) The borrower shall provide RUS with a satisfactory Area Coverage Survey. See 7 CFR 1737.30 and 1737.31.

(e) RUS makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by RUS. In addition, RUS considers a system to be feasible only if the system, in addition to being feasible in all other respects, is year 2000 compliant or if the borrower provides RUS with a certification, satisfactory to RUS, that the system will be year 2000 compliant at a reasonable time before December 31, 1999. *Year 2000 compliant* means that product performance and function are not affected by dates before, during, and after the year 2000.

(f) For purposes of determining compliance with TIER requirements, unless a borrower whose existing mortgage contains TIER maintenance requirements notifies RUS in writing differently, RUS will apply the requirements described in paragraph (g) of this section to the borrower regardless of the provisions of the borrower's existing mortgage.

(g) For loans approved after October 6, 1997 loan contracts and mortgages covering hardship loans, RUS cost-of-money loans, RTB loans, and guaranteed loans will contain a provision requiring the borrower to maintain a TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the borrower shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

(h) Nothing in this section shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's TIER requirement to a level above that established in paragraph (g) of this section.

(i) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by RUS.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26597, June 10, 1991; 58 FR 66254, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997; 63 FR 45678, Aug. 27, 1998]

§§ 1735.23–1735.29 [Reserved]

**Subpart C—Types of Loans**

**§ 1735.30 Hardship loans.**

(a) RUS makes hardship loans under section 305(d)(1) of the RE Act. These loans bear interest at a rate of 5 percent per year. To qualify for a hardship loan on or after November 1, 1993, a borrower must meet each of the following requirements:

(1) The average number of proposed subscribers per mile of line in the service area of the borrower is not more than 4;

(2) The borrower has a projected TIER (including the proposed loan or loans) of at least 1.0, but not greater than 3.0, as determined by the feasibility study prepared in connection with the loan, see 7 CFR part 1737, subpart H; and

(3) The Administrator has approved and the borrower is participating in a telecommunications modernization plan for the state, see 7 CFR part 1751, subpart B.

(b)(1) Hardship loan funds shall not be used to finance facilities located in any exchange of the borrower that has:

(i) More than 1,000 existing subscribers; and

(ii) An average number of proposed subscribers per mile of line greater than 17.

(2) Those facilities may, however, be financed with concurrent RUS cost-of-money and RTB loans or a guaranteed loan if the borrower is eligible for such financing.

(c) The Administrator may waive the TIER requirement in paragraph (a)(2) of this section in any case in which the Administrator determines, and sets forth the reasons therefor in writing, that the requirement would prevent emergency restoration of the telephone system of the borrower or result in severe hardship to the borrower.

(d) In order to fairly and equitably approve hardship loans to ensure that borrowers most in need receive hardship financing first, RUS will prioritize for approval all applications qualifying for hardship loans. The criteria in this paragraph will be used by the Administrator to rank, from high to low, applications that have been determined to qualify for hardship financing. Subject to the availability of funds, applications receiving the highest number of points will be selected for loan approval each fiscal year quarter (the application with the most points will be approved first, the second highest next, etc.) The following ranking methodology and loan approval conditions apply:

(1) *Ranking criteria.* Borrowers will receive points based on each of the following criteria applicable to the proposed loan:

(i) *Forecasted Average Number of Subscribers Per Mile of Line (Density).* The